

REMARKS

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, claims 1-5 and 15-23 are pending in the application, with claims 1 and 15 being the independent claims. Claims 11-14 have been cancelled without prejudice or disclaimer. Support for the subject matter of the amended claims is contained in the application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 11, 12 and 15-23 under 35 U.S.C. §112, second paragraph as being indefinite. Applicant respectfully submits that the rejection of claims 11 and 12 is rendered moot by the cancellation thereof, and the rejection of claims 15-23 is overcome by the accompanying amendment thereto.

Rejections under 35 U.S.C. § 102***Claims 1-5***

The Examiner has rejected claims 1-5 as anticipated by or obvious over one or more of U.S. Patent No. 3,610,484 to Matzka ("the Matzka patent"), U.S. Patent No. 5,839,627 to Hicks ("the Hicks patent"), U.S. Patent No. 6,467,638 to Gzybowski et al. ("the Gzybowski patent"), U.S. Patent No. 3,135,441 to Wise ("the Wise patent"), and U.S. Patent No. 5,301,489 to Guglielmini et al. ("the Guglielmini patent"). The Matzka, Hicks, Gzybowski, Wise, and Guglielmini patents, taken individually or combined, fail to disclose or suggest the fitment of the present invention that includes a semicircular gripping member having a first terminal end connected to a frangible membrane and a second terminal end remotely located from the first end

and unconnected to the frangible membrane, wherein the frangible membrane and the gripping member are monolithically formed, as is called for by independent claim 1.

The Matzka patent does not disclose such features. Instead, the Matzka patent discloses a frangible container closure having an open tearing ring 17. *See* column 1, lines 56 *et seq.*; FIG. 3. In fact, the Matzka patent teaches away from the present invention as the terminal ends of ring 17 are both connected to membrane 2 by webs 18. *See* FIG. 3; column 1, lines 59-66 (“More particularly, the webs 18 form the downwardly bent extremities of the tab...”). Thus, the Matzka patent fails to teach or suggest a terminal end of a semicircular gripping member that is unattached to a membrane.

The Hicks patent does not disclose such features. As noted by the Examiner, the Hicks patent fails to teach or suggest a semicircular member having first and second ends. *See* Office Action, page 5, first whole paragraph. Instead, the Hicks patent, which is presently assigned to the assignee of the present invention (Portola Packaging, Inc.), discloses a container having a reclosable pour spout 10 having a pull device 30. *See, e.g.*, column 5, lines 3 *et seq.*; FIG. 1A. The Hicks patent also teaches away from the present invention. The pull devices illustrated by the Hicks patents are pull rings, as is evidenced by the cross-sectional hatching of pull device 30 in FIG. 1A adjacent numeral 30, as well as the cross-sectional hatching of pull device 30 adjacent numeral 16. Like many conventional pull rings, pull device 30 is attached membrane seal 20 by a post or web adjacent numeral 30. Thus, the Hicks patent fails to teach or suggest either a semicircular gripping member or a terminal end of a semicircular gripping member that is unattached to a membrane.

The Examiner relies on the Gzybowski patent to make up for the deficiencies of the Hicks patent. However, the Gzybowski patent also fails to disclose such features. The Gzybowski patent fails to teach or suggest a semicircular gripping member. Nor does the Gzybowski patent teach or suggest a gripping member connected to a frangible membrane. Thus, the Gzybowski patent fails to teach or suggest a terminal end that is unconnected to the frangible membrane.

Instead, the Gzybowski patent teaches a closure that is intended to be pressed into a bottle in much the same way as a conventional cork is pressed into a bottle. *See* column 3, lines 4 *et seq.* The closure includes a cylindrical core member 2. *See* column 3, lines 54 *et seq.*; FIGS. 1 and 2. Cylindrical core member 2 includes a helical or spiral perforation 5. *See* column 3, lines 59-65. The cylindrical core member cannot be considered a semicircular gripping member, namely because the cylindrical core member is cylindrical. Furthermore, the illustrated cylindrical core members are perforated and coiled upon themselves nearly two-dozen times. A web 14 formed by unwinding cylindrical core member 2 would thus extend approximately 8640° (e.g., $24 \times 360^\circ = 8640^\circ$). Thus, web 14 cannot be considered semicircular as it extends well over 360° : web 14 is circular, several times over.

As for the Wise and Guglielmini patents, neither teach or suggest, a semicircular gripping member, much less a semicircular gripping member having a second terminal end being unconnected to the frangible membrane.

In contrast, the fitment of the present invention includes a semicircular gripping member (e.g., gripping member 64) having a first terminal end (e.g., first terminal end 71) connected to a frangible membrane (e.g., frangible membrane 63). The gripping member further includes a second terminal end (e.g., second terminal end 74) that is remotely located from the first terminal end and is unconnected to the frangible membrane. Furthermore, the frangible membrane and the gripping member are monolithically formed.

The semicircular/free end configuration of the gripping member is specifically adapted to facilitate a user in gripping and pulling the gripping member when removing frangible membrane. *See*, e.g., paragraph no. 55. For example, gripping member 64 is flexible and allows the user to straighten semicircular segment 70 to some degree allowing the segment to better conform to the contour of the user's finger. *See* paragraph no. 60. Furthermore, the semicircular/free end configuration of the gripping member may simplify the manufacturing process by providing a shape that more readily de-molds. *See*, e.g., paragraph no. 65. For example, the semicircular configuration of gripping member 64 breaks open the loop of

conventional pull rings and allows the gripping member to bend and flex out of the way as mold tooling retracts.

For at least these reasons, Applicant respectfully submits that the Matzka, Hicks, Gzybowski, Wise, and Gugliemini patents, taken individually or combined, do not anticipate nor render obvious presently amended claim 1. Applicant submits that claims 2-5, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

With respect to claim 2, Applicant also submits that the Wise patent does not teach or suggest gripping structure that extends radially inward from an inner diameter wall. Instead, the Wise patent discloses a tab 68 that includes cross-wise extending ribs 71 along a substantially flat surface. *See* column 4, lines 60 *et seq.*; FIGS. 1 and 2.

With respect to claim 5, Applicant also respectfully traverses the Examiner's rejection based on the grounds that it would have been obvious to provide the open tearing ring 17 of the Matzka patent with an "extension approximately 270°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art". *See* Office Action, page 4, section 10. Should the Examiner maintain this rejection, Applicant respectfully requests citation of a reference in support of the Examiner's position. *See M.P.E.P.* § 2144.03.

Claims 11-14

Claims 11-14 have been cancelled without prejudice or disclaimer. Applicant respectfully submits that the rejections of claims 11-14 have been rendered moot by the cancellation thereof.

Allowable Subject Matter

Applicant thanks the Examiner for indicating that claims 15-23 are allowable if rewritten to overcome the rejections under 35 U.S.C. § 112. Applicant respectfully submits that claim 15 has been amended to overcome said rejections and is now allowable. Claims 16-23, which depend from claim 15, are similarly allowable.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00192; Docket No. A-70895/RBC/VEJ).

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

DORSEY & WHITNEY LLP

Date: 3/2/2004

By: 

Victor E. Johnson, Reg. No. 41,546
/for/ Robert B. Chickering, Reg. No. 24,286
Filed Under 37 C.F.R. § 1.34(a)

DORSEY & WHITNEY LLP
Four Embarcadero Center, Suite 3400
San Francisco, CA 94111-4187
Telephone: (415) 781-1989 Facsimile: (415) 398-3249